

**REMARKS**

Claims 1-29 are all the claims presently pending in the application. There are no prior art rejections. Thus, presumably once the informalities under 35 U.S.C. §112, second paragraph and §101 are overcome, all of the claims should be allowable.

Regarding the rejection under 35 U.S.C. § 112, second paragraph, the claims have been amended in a manner believed fully responsive to all points raised by the Examiner.

First, with regard to the Examiner's comment that the preambles of claims 1, 28, and 29 "state that they are drawn to 'forecasting of computing resources' and yet never appear to accomplish such desired intended results", Applicant points out that the invention of claim 1 is directed to a method of preprocessing (e.g., preprocessing data) which provides a basis for the forecasting of computing resources.

In contrast, independent claim 28 is directed to a "computer system" including concrete and tangible structural elements, and independent claim 29 is directed to a signal bearing medium which stores a program executable by a digital process apparatus to perform a method for preprocessing data to be used for forecasting of computing resources.

Thus, the method per se of claim 1 (and that stored in the medium of claim 29) is not directed to forecasting of computing resources, but to preprocessing data which provides a basis for (e.g., supports) such forecasting of computing resources (e.g., see specification at page 1, lines 7-8; etc.). Thus, the preambles are believed clear in these claims and to what the invention is drawn.

However, notwithstanding the above, to expedite prosecution and to quickly dispose of this issue so as to obtain an immediate allowance, claims 1, 28 and 29 have been amended to make clear that the preprocessing of the data provides a basis for (e.g., supports) “said forecasting of said computing resources”.

Secondly, with regard to the rejection of claims 1-29 under 35 U.S.C. § 101, Applicant submits that the claims are directed to statutory subject matter.

The Examiner rejects claims 1-29 indicating that the claims can be "... interpreted as a series of preprocessing instructions to an operator representing an abstract idea that lacks tangibility". Thus, presumably the Examiner believes that the invention is directed to method steps, which can be practiced mentally in conjunction with pen and paper, and therefore they are directed to non-statutory subject matter. Applicant respectfully disagrees.

That is, Applicants respectfully traverse this rejection, since the criterion for rejection under 35 U.S.C. § 101 is not whether one might be able to practice the method mentally in conjunction with pen and paper. As the Federal Circuit has already stated, Federal Circuit judges are not going to proceed forward on patent infringement cases in which the alleged infringer is one performing a mental exercise. It is submitted that part of the problem is that the English language does not yet contain words that indicate the difference between verb actions done by a computer versus actions done by humans.

As noted by the Examiner, each of claims 1, 28, and 29 recites detecting spikes, jumps and removing the same from observations. The Examiner asserts that such is recited “without having a method clearly in the technological arts.” However, such spike and jump detection techniques (as well as their removal from the observations) are clearly and sufficiently described

in the application and are believed to be well-known to those of ordinary skill in the art after taking the present application as a whole. Thus, the techniques are provided.

For example, an exemplary spike detection 503 is shown in Figure 5 and is performed with the method shown in the example of Figure 9 (e.g., step 807 of Figure 8, which shows individual spike detection). Jump detection 504 is shown in Figure 5 and may be performed as shown in Figure 9 or with the method 1000 of Figure 10. That is, as mentioned on page 22, line 11 of the application, “[t]hose skilled in the art will appreciate that the jump detection 504 can be accomplished with a variation of the method described in Figure 9.”

Additionally, as the Examiner notes, independent method claim 1 recites a “computer system” in the preamble. At the Examiner’s helpful suggestions, the body of claim 1 refers back to the “computer system.” Similarly, in independent claim 29, the body of the signal bearing media claim refers back to the “digital processing apparatus”. Thus, it is clear that, in claims 1 and 29, such method steps are not performed “on paper or even mentally”, but instead are performed by concrete and tangible structure for achieving the intended purpose.

With regard to independent claim 28, it is noted that claim 28 is in fact a structure claim and specifically claims a “computer system” having a combination of specific and tangible structural elements in the body of the claim for accomplishing the claimed functions. Hence, this claim is believed to be clearly statutory subject matter for performing the claimed functions of the method. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

It is noted that the claim amendments herein are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims, or for any statutory requirements of patentability.

Further, it is noted that, notwithstanding any claim amendments made herein, Applicant's intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

In view of all of the foregoing, Applicant submits that all of the pending claims are patentable over the prior art of record.

### **III. FORMAL MATTERS AND CONCLUSION**

Regarding the Examiner's objection to the drawings, submitted herewith are Replacement Drawings for Figures 11-13 (labeling the axes) and 15 (labeling the functional blocks). No new matter has been added.

The specification has been amended to overcome the Examiner's objection thereto.

In view of the foregoing, Applicant submits that claims 1-29, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

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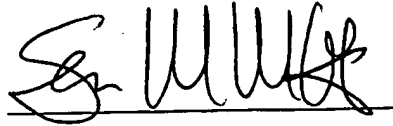
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The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,

Date:

1/5/05

A handwritten signature in black ink, appearing to read 'Sean M. McGinn', written over a horizontal line.

Sean M. McGinn, Esq.  
Reg. No. 34,386

**McGinn & Gibb, PLLC**  
8321 Old Courthouse Rd. Suite 200  
Vienna, VA 22182-3817  
(703) 761-4100  
**Customer No. 21254**